STATE OF MICHIGAN

COURT OF APPEALS

LEONARDO GARCIA,

Plaintiff-Appellant,

v

SAGINAW POLICE AND FIRE RETIREMENT SYSTEM,

Defendant-Appellee.

UNPUBLISHED
April 6, 2006

No. 266099
Saginaw Circuit Court
LC No. 04-053168-CZ

Before: Smolenski, P.J., and Owens and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order granting summary disposition to defendant. We affirm. This appeal is being decided without oral argument in accordance with MCR 7.214(E).

Plaintiff was employed by the Saginaw Fire Department for over twenty years. For much of his career, plaintiff served as a firefighter and was a member of the union. However, on July 1, 1999, plaintiff accepted a promotion to assistant chief of the department, which position was non-union. On December 28, 2002, plaintiff retired and began collecting his pension.

Upon plaintiff's retirement, defendant calculated plaintiff's pension benefits solely in accordance with the formula applicable to fire chiefs and assistant fire chiefs. However, plaintiff disagreed with this calculation and requested that his benefits be calculated using both the formula applicable to firefighters and the formula applicable to assistant fire chiefs, each in proportion to his years of service in those respective positions. When defendant declined plaintiff's request, plaintiff commenced the present suit. After defendant moved for summary disposition, the trial court concluded that defendant had properly applied the municipal ordinance governing plaintiff's pension and granted defendant's motion. Plaintiff then appealed to this Court as of right.

On appeal, the parties do not dispute that plaintiff was a firefighter throughout the employment period in question. The only issue is whether the separate methodology for computing an assistant chief's retirement benefits applies only to service credited to plaintiff for the time that he actually served as assistant chief, or to all years of service credited to plaintiff during his tenure in the department. Plaintiff argues that the trial court erred in concluding that

defendant correctly used only the formula applicable to an assistant chief for his entire period of service. We disagree.

We review a lower court's interpretation of the meaning of a municipal ordinance de novo. *Ballman v Borges*, 226 Mich App 166, 168; 572 NW2d 47 (1997). "The rules of statutory construction apply to the construction of ordinances as well." *Id.* at 167. Pension laws should be liberally construed in favor of the intended beneficiaries. *Bannon v City of Saginaw*, 420 Mich 376, 385; 362 NW2d 668 (1984). However, legislative language must be interpreted "without straining or refinement, and the expressions used are to be taken in their natural and ordinary sense." *Gross v General Motors Corp*, 448 Mich 147, 160; 528 NW2d 707 (1995). Specific legislative provisions generally prevail over related general ones. See *Gebhardt v O'Rourke*, 444 Mich 535, 542-543; 510 NW2d 900 (1994).

Pursuant to Saginaw Ordinances, § 16.12(A)(1)(a),

> [F]irefighters who retire on or after July 1, 1997 shall receive two and six tenths percent (2.6%) of the first twenty-five (25) years of service and two and three-fourths percent (2.75%) for all service over twenty-five (25) years, however the Firefighter Union may request a modification in the multiplier to two and eight-tenths percent (2.8%) for all years of service provided that any increased cost in the City's contribution to the pension system shall be borne by members of the unit and there shall be no additional cost to the City. . . . [H]owever a Fire Chief or Assistant Fire Chief who retires on or after March 25, 1999, shall receive two and six-tenths percent (2.6%) for the first twenty-five (25) years of service and two and three-fourths (2.75%) for all years thereafter of his or her final average salary multiplied by the numbers of years and fraction of a year of his or her credited service.

The ordinance sets forth the particulars through which the pensions of firefighters generally are to be calculated, then does the same specifically for chiefs and assistant chiefs. The latter provision is set off from the former through use of the word "however," thus signaling that the two are contrasting in nature. In addition, the use of 25-year time frames under both formulas strongly suggests that each was intended to cover the whole term of employment, rather than a particular period of service at a given position. Moreover, other than differentiating between the first 25 years and periods extending beyond that, the ordinance does not expressly provide for establishing pension benefits based on separate calculations for each of the various positions held by the employee throughout the employee's career.

In addition, we note that the ordinance actually prescribes identical multipliers for firefighters generally, and chiefs or assistant chiefs particularly, except that the provision for the former includes the possibility of a slightly higher multiplier at the request of the union. That the positions within the fire department are differentiated by union status militates in favor of recognizing the separate provision for firefighters generally, and for chiefs and assistant chiefs specifically, as constituting independently operating, comprehensive pension formulas. It is only logical that a pension system that recognizes a potential union benefit should reserve that benefit to union members, which status plaintiff gave up when he accepted his promotion to assistant fire chief.

Plaintiff further argues that the change in his pension benefits resulting from his promotion constitutes a violation of our state constitution's provision that "[t]he accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby." Const 1963, art IX, § 24. We disagree. All contracts are subject to being obviated, or subsumed, by new agreements reached by the parties. See *Smiley v Grand Blanc Bd of Ed*, 416 Mich 316, 331; 330 NW2d 416 (1982); *Windorf v Ferris*, 154 Mich App 201, 203-204; 397 NW2d 268 (1986).

There is no dispute that plaintiff had vested rights in the pension plan as calculated for union firefighters, which defendant could not diminish unilaterally. However, even a constitutional right may be contractually relinquished. *Stone v State of Michigan*, 467 Mich 288, 292; 651 NW2d 64 (2002). See also *Cranford v Wayne Co*, 156 Mich App 655, 659; 402 NW2d 64 (1986) ("By voluntarily accepting promotion, plaintiffs also voluntarily accepted a different pension plan."). Thus, our state constitution's provision safeguarding pension benefits did not prohibit plaintiff's voluntary succession from the pension plan applicable to union firefighters to that applicable to nonunion management.

Plaintiff also contends that treating chiefs or assistant chiefs differently from rank and file firefighters in this regard may violate constitutional principles of equal protection. US Const, Am XIV, § 1; Const 1963, art 1, § 2. Again, we disagree.

Where a challenged governmental scheme concerns neither a suspect classification nor a fundamental right, the law must be upheld if it rationally relates to any legitimate governmental interest. *Plyler v Doe*, 457 US 202, 216-217; 102 S Ct 2382; 72 L Ed 2d 786 (1982). Under this test, legislation is presumed constitutional, and the party challenging it bears the burden of proving that it is arbitrary and thus irrational. See *People v Pitts*, 222 Mich App 260, 273; 564 NW2d 93 (1997). Plaintiff failed to overcome the presumption that the ordinance is constitutional.

Affirmed.

/s/ Michael R. Smolenski
/s/ Donald S. Owens
/s/ Pat M. Donofrio